

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CR2015-125712-001 DT

11/15/2017

HONORABLE DOUGLAS GERLACH

CLERK OF THE COURT
M. Mogel
Deputy

STATE OF ARIZONA

RICHARD E SERDEN
STANLEY J MARKS

v.

JEOPREY MUTINDA KAVU (001)

DIEGO RODRIGUEZ
MICHAEL S REEVES

PRETRIAL SERVICES AGENCY-CCC

TRIAL MINUTE ENTRY
DAY NINE

Courtroom SCT

State's Attorney:	Not present for deliberations
Defendant's Attorney:	Not present for deliberations
Defendant:	Not present for deliberations

10:31a.m. Trial to jury continues from 11/14/2017.

LET THE RECORD REFLECT the deliberating jury is all present in the jury room and continue their deliberations from 11/14/2017.

10:44 a.m. Court reconvenes.

State's Attorney:	Richard Serden
Defendant's Attorney:	Diego Rodriguez (appearing telephonically)
Defendant:	Presence waived

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Court Reporter, Monica Hill-Morrisette, is present.

A record of the proceedings is also made digitally.

LET THE RECORD REFLECT a jury question has been submitted. Same is discussed and a written response provided.

FILED: Juror Question 23

Discussion is held regarding the possibility of an aggravation phase and scheduling of same.

10:57 a.m. Court stands at recess.

11:53 a.m. The court is informed that the jury has reached a verdict.

1:27 p.m. Court reconvenes.

State's Attorney:	Richard Serden
Defendant's Attorney:	Diego Rodriguez
Defendant:	Present

The jury is not present.

Further discussion is held regarding the possibility of an aggravation phase and scheduling of same.

LET THE RECORD REFLECT the parties previously stipulated on 11/01/2017 that for the purposes of a trial to a jury, the Jury presentation Indictment will be read by the Clerk to the Jury in place of the originally filed Indictment. The Jury presentation Indictment substitutes the words "Count 2" for the words "Count 3 of the original Indictment, the words "Count 3" for the words "Count 4". This same count designation will be used for all Forms of Verdict presented to the jury. All post-trial events, including sentencing, will revert to the count designation of the originally filed Indictment's count sequence.

1:28 p.m. The jury is now present.

Court Reporter, Monica Hill-Morrisette, is present.

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The foreperson advises a verdict has been reached.

The jury is all present in the jury box and, by their foreperson, returns into court their verdicts, which are read and recorded by the clerk and are as follows:

Verdict – Count 1:

“We, the Jury, duly empaneled and sworn in the above-entitled action, upon our oaths, do find the Defendant, as to **Count 1, Manslaughter**:

Unable to agree.

Having found the Defendant not guilty of **Count 1, Manslaughter** or, after full and careful consideration of the facts, being unable to agree on whether to find the Defendant guilty or not guilty of said offense, we do find the Defendant as to the lesser included offense of **Negligent Homicide**,

Guilty

Signed Foreperson.

Verdict – Count 2:

We, the Jury, duly empaneled and sworn in the above-entitled action, upon our oaths, do find the Defendant as to **Count 2, Leaving Scene of a Fatal Injury Accident** (Count 3 on the original Indictment):

Not Guilty

Signed Foreperson.

Verdict – Count 3:

We, the Jury, duly empaneled and sworn in the above-entitled action, upon our oaths, do find the Defendant as to **Count 3, Endangerment** (Count 4 on the original Indictment):

Guilty

Signed Foreperson.”

The jurors reply that these are their true verdicts.

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Counsel approach the bench and discuss matters, on the record, out of hearing of the jury.

Aggravation Phase instructions and verdict forms are settled.

The jury is instructed by the court as to the law applicable to aggravating circumstances.

FILED: Aggravating Circumstances Instructions

The State presents argument for a finding of aggravating circumstances.

State's case:

Roz Dixon is sworn and testifies.

The court receives a written question from the jury. Court and counsel discuss the questions, on the record, out of hearing of the jury. The relevant question is not asked or answered by the witness.

FILED: Juror Question 24

The witness is excused.

The defense presents argument for no finding of aggravating circumstances.

Both sides rest.

Closing arguments.

2:07 p.m. The jury retires in charge of sworn bailiffs to consider their verdicts.

2:43 p.m. Court reconvenes with respective counsel and defendant present.

Court Reporter, Monica Hill-Morrisette, is present.

A record of the proceedings is also made digitally.

The jury is all present in the jury box and by their foreperson return into court their verdict, which is read and recorded by the clerk and is as follows:

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Verdict-Count 1

“We, the Jury, duly empaneled and sworn in the above-entitled action, upon our oaths, as to **Count 1: Negligent Homicide** do unanimously find beyond a reasonable doubt the following aggravating circumstance or circumstances as shown by the circumstance or circumstances checked:

The offense is a dangerous offense because the defendant used a motor vehicle, a dangerous instrument:

Proven

The victims, or if the victim died as a result of the conduct of the defendant, the offense caused emotional or financial harm to the victim’s immediate family:

Proven

The defendant lied to the police to hinder their investigation:

Not proven

The offenses included multiple victims in a single incident:

Proven

Signed Foreperson.”

Verdict-Count 3

“We, the Jury, duly empaneled and sworn in the above-entitled action, upon our oaths, as to **Count 3: Endangerment** (Count 4 on the original Indictment) do unanimously find beyond a reasonable doubt the following aggravating circumstance or circumstances as shown by the circumstance or circumstances checked:

The offense is a dangerous offense because the defendant used a motor vehicle, a dangerous instrument:

Proven

The victims, or if the victim died as a result of the conduct of the defendant, the offense caused emotional or financial harm to the victim’s immediate family:

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Proven

The defendant lied to the police to hinder their investigation:

Not proven

The offenses included multiple victims in a single incident:

Proven

Signed Foreperson.”

FILED: Verdicts

2:48 p.m. The jury is thanked by the court and excused from further consideration of this cause. Court remains in session.

IT IS ORDERED setting time for sentencing on 12/18/2017 at 8:30 a.m. before this division.

IT IS FURTHER ORDERED that the Adult Probation Office shall conduct a presentence investigation and submit a report to this division prior to sentencing.

ISSUED: Request for Presentence Report.

IT IS FURTHER ORDERED revoking the defendant’s release conditions and remanding him/her to the custody of the Sheriff pending sentencing.

ISSUED: Order of Confinement.

IT IS FURTHER ORDERED pursuant to Rule 7.2(c) Defendant shall not be released on bail or own recognizance.

Defense counsel makes an oral Motion to Exonerate Bond.

Good cause appearing,

IT IS ORDERED exonerating any bond previously posted in this matter to the party posting same.

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ISSUED: Order Exonerating Bond

IT IS FURTHER ORDERED permanently releasing any exhibits not offered in evidence.

ISSUED: Exhibit Release Forms

FILED: Order of Confinement, Trial Worksheet, Jury List

2:50 p.m. Trial concludes.